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April 30, 2019

VIA ECF

Hon. Douglas E. Arpert, U.S.M.J.
U.S. District Court
Clarkson S. Fisher Building & U.S. Courthouse
Room 6000
402 East State Street
Trenton, NJ 08608

**Re: *Lawson, et al. v. Praxair, Inc., et al.*
 Civil Action No. 3:16-cv-02435-BRM-DEA**

Dear Judge Arpert:

We represent Western/Scott Fetzer Company (“Western”) in the above-captioned matter. Please accept this letter in response to the Court’s April 15, 2019 Order directing the parties to make submissions addressing “(1) the party’s position on any issue the party would like the Court to consider in relation to the appointment of a Special Master; and (2) the party’s position on the items identified in Rule 53(b)(2).” Dkt. 187.

Western requests that the Order appointing the Special Master limits his authority to the issues covered in the parties’ joint status report filed April 5, 2019 (Dkt. 184), and any new discovery issues arising going forward. Western also requests that Special Master not be empowered to re-visit issues that have already been decided by this Court.

Western agrees that the Special Master be permitted to engage in *ex parte* communications with the Court at his or her discretion. Western does not consent, however, to the Special Master engaging in *ex parte* communications with any of the parties, without first asking permission of the parties to do so. Western also requests that the Order require the Special Master to create a record of any proceedings and/or submissions consistent with the Federal Rules of Civil Procedure and the Local Rules of this Court. Fed. R. Civ. P. 53(b)(2)(C).

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This would include preserving all written communications and documents provided to the Special Master by the parties and all transcripts of proceedings and other material serving as a basis for making findings and formulating recommendations to the Court. Western also requests that the Special Master shall file a report and recommendation setting forth in full any decision that he reaches together with the basis for that decision in accordance with Fed. R. Civ. P. 53(e).

As to compensation of the Special Master, Western requests that his charges initially shall be split equally among the parties; provided, however, that the Court shall retain the right to shift all or part of the charges to one party or the other after submission of a Special Master's report and upon a showing of good cause. Western also requests that the Special Master not be empowered to levy sanctions against any party. Rather, any sanctions should come about, if at all, through a report and recommendation to the Court.

As to selection of the Special Master, in accordance with Fed. R. Civ. P. 53(b)(1), Western takes no position.

Respectfully submitted,
/s/Eric S. Westenberger
Eric S. Westenberger